IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 20139 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? **-No.**

2 To be referred to the Reporter or not ? **-No.**

3 Whether their Lordships wish to see the fair copy of the judgment ? **-No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? **-No.**

5 Whether it is to be circulated to the civil judge ? **-No.**

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PRADIPBHAI @ JADIO THAKORBHAI THAKKAR - Petitioner(s)

Versus

STATE OF GUJRAT & 2 - Respondent(s)

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Appearance :

MR ARVIND K THAKUR for Petitioner(s) : 1,MR KS TAMAYACHE for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1,
DS AFF.NOT FILED (R) for Respondent(s) : 2,
GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 01/12/2005

ORAL JUDGMENT

1.Shri Pradipbhai @ Jadio Thakorbhai Thakkar, petitioner has filed this petition of habeas corpus with a prayer

that this Court may be pleased to quash and set aside the order of detention dated 18/8/2005 passed by the Police Commissioner, Vadodara, detaining authority, under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 as being illegal, invalid, null and void, arbitrary, suffers from non-application of mind and violative of the articles 14, 21 and 22 of the Constitution of India. Petition has been filed on 28/9/2005 and matter was placed before the Court on 4/10/2005. On that day, my brother Mr.Justice A.S.Dave has issued rule, which is returnable. Therefore, the matter has come up for final hearing in this Court.

2.Mr.Arvind Thakur, Learned advocate for the petitioner has invited my attention to the order of detention dated 18/8/2005 passed by the Police Commissioner, Vadodara, detaining authority, under the provisions of Section 3(2) of the PASA Act and also invited my attention to the order dated 18/8/2005, by which the authority has detained the Petitioner in special jail, Porbandar. The learned advocate has invited my attention to the grounds supplied by the Police Commissioner, Vadodara to the petitioner i.e. Also dated 18/8/2005. The said grounds revels that

petitioner has committed two offences which are as under:

1. Offence registered at Valsad (R) Police Station in connection with CR No.5203 of 2005 under Section 66(B), 65(A)(E), 81 and 116 of the Prohibition Act. Offence was committed on 3/8/2005. It is alleged that petitioner was storing 360 bottles of English liquor valued at Rs.72,000/- and one maruti car valued at Rs.3,50,000/-. Police investigation is going on.

2. Offence registered at South Division Prohibition Station in connection with CR No.1344 of 2005 under Section 66(B), 65(A)(E), 81 and 116 of the Prohibition Act. Offence was committed on 12/8/2005. It is alleged that petitioner was storing 1 bottle of English liquor valued at Rs.375/-, one motor cycle valued at Rs.37,000/-, cash Rs.2630/- one scooter valued at Rs.9500/-, one mobile phone valued at Rs.5000/-, fourteen royal challenge premium lezar bear tin valued at Rs.350/- and one bag valued at Rs.25/-.

3.It was alleged that petitioner is carrying on anti social activities as carrying on business of liquor and

therefore, he is bootlegger under Section 2(b) of the PASA Act as the activities of the petitioner also affects the public health in this behalf.

4. Petitioner has submitted that order of detention is bad on the grounds that there may be only disturbance of law and order and not public order in this behalf. For which he has relied upon the judgment in the case of Piyush Kantilal Mehta v. Commissioner of Police, reported in AIR 1989 SC 491, Division Bench judgment of this Court (Coram:M.R.Calla and R.R.Tripathi, J.J) in Letters Patent Appeal No.223 of 2000 in Special Civil Application No.554 of 2000 in the case of Ashok Balabhai Makwana decided on 22/8/2000 and another judgment of this Court (Coram: C.K.Thakkar and K.M.Mehta, J.J.), reported in 2000 (1) GLR 816 in the case of Ashokbhai Jivrajbhai v. Police Commissioner.

5. The On behalf of the respondents, Mr.L.R.Pujari, learned APP appears. He has relied upon order of detention as well as grounds of detention in this behalf. He has also filed affidavit in reply in this behalf.

6. Having heard the learned counsel for both the parties, in my considered view, the detaining authority has passed the order of detention without there being any credible and cogent material in this behalf. Contentions of the petitioner are squarely covered by the decisions of the Hon'ble Apex Court in the case of Piyush Kantilal Mehta (supra) and Division bench Judgment of this Court (Coram: M.R.Calla and R.R.Tripathi, J.J.) in L.P.A. No.223 of 2000 in S.C.A. no.554 of 2000 in case of Ashok Balalbhai Makwana and another judgment of this Court (Coram: C.K.Thakkar and K.M.Mehta, J.J.) in the case of Ashokbhai Jivrajbhai (supra). And therefore, the order of detention is required to be quashed and set aside.

7. Having heard the rival submissions of the parties and perused the records of the case, I am of the view that only registration of criminal cases under the Bombay Prohibition Act alone cannot be said to be sufficient enough to arrive at the subjective satisfaction to the effect that the activities of the detenue are prejudicial to the public order. The power to detain a person under the PASA Act is not based on simple facts about registration of crimes under the Bombay

Prohibition Act or the activities of bootlegging of the detenue. There has to be nexus and link for such activities with disturbance of the public order. The activities of the detenue must in the backdrop of the facts, reflect that such activities disturbed the even tempo or normal life of the community in the locality or disturbed general peace and tranquility or create a sense of alarm and insecurity in the locality. On careful perusal of the grounds of detention order and relying upon the judgment and order dated 22/8/2000 of the Division Bench of this Court (Coram:M.R.Calla and R.R.Tripathi, J.J.) in L.P.A. No.223 of 2000 in S.C.A. No.554 of 2000, judgment of Supreme Court in Piyush Kantilal Mehta (supra) and Special Civil Application No.20420 of 2005 decided by this Court (Coram:K.M.Mehta, J.) on 15/11/2005, in my view, it cannot be said that the activities of the detenue are prejudicial to the public order. Therefore, the order of detention passed by the detaining authority cannot be sustained and is required to be quashed and set aside.

8. I have considered the facts and circumstances of the case in view of the submissions made by the learned

counsel for the petitioner, judgment of the Hon'ble Apex Court in the case of Piyush Kantilal Mehta (supra) and judgment in Letters Patent Appeal (supra) and other judgment cited by the petitioner. Considering all these, I am of the view that the activities of the petitioner may affect law and order situation and not affect the public order and therefore, subjective satisfaction arrived at by the authority is not legal and valid. Therefore, the order of detention passed by the authority is required to be quashed and set aside.

9. In the result, I am of the view that the order of detention cannot be sustained by law. I hereby quash and set aside the order of detention. Petition is allowed. Pradipbhai @ Jadio Thakorbhai Thakkar, detenue is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly with no order as to cost. Direct service is permitted.

(K.M.MEHTA, J.)

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